

Section III:
AMENDMENT UNDER 37 CFR §1.121 to the
DRAWINGS

No amendments or changes to the Drawings are proposed.

Section IV:
AMENDMENT UNDER 37 CFR §1.121
REMARKS

Withdrawal of Appeal

Applicant hereby withdraws the Appeal of the final rejections of the Office Action dated 11/03/2006 in view of the suggestions proposed in the Examiner's Answer to the Appeal Brief. Applicant requests reconsideration of the rejections in view of the amendments made herein, and hereby files a Request for Continued Examination.

The Appeal Brief filed 4/4/2007 is incorporated herein in its entirety.

Rejections under 35 U.S.C. §112 and 35 U.S.C. §101

In the Examiner's Answer regarding the rejections of Claims 21 - 29, it was suggested:

Examiner:

The examiner suggests removing the term "for" used throughout the claim and rewrite the claims to indicate the actual interactions between the various components that occur within the claimed system.

The Examiner had proposed and suggested:

Examiner:

For example, the applicant may be intending to claim a computer program on a computing device causing a computer processor to execute the steps consisting of:

- a. Searching two or more data object repositories.. .
- b. Selecting two or more data objects. . .
- c. Producing a composite advertisement.. .
- d. Displaying a composite advertisement.. .

Applicant confirms that Examiner's proposition is essentially correct in the form of a method claim, but wishes for Claims 21 - 29 to be drawn to a system which may be realized as a computer plus software, or may be alternatively realized in part or whole in circuitry and/or firmware, such as application specific integrated circuits, programmable logic devices, etc.

By "system", Applicant is referring to computer systems which comprise such specialized circuitry, as well as microprocessors and software:

"The computer itself is the 'hardware'; the programming necessary to run it is the 'software'; together the hardware and software form the 'computer system.'"

Computer Systems Eng'g, Inc. v. Qantel Corp., 740 F.2d 59, 63 n.3 (1st Cir. 1984).

A computer system "... consists of a central processing unit (or 'mainframe') and peripheral equipment."

Greyhound Computer Corp. v. IBM Corp., 559 F.2d 488, 492 (9th Cir. 1977).

A computer system is a "group of devices designed: (a) to receive various forms of data (input); (b) to process the data in accordance with predesignated sets of instructions (programs); and (c) to produce the desired information (output)."

Dreier Co. v. Unitronix Corp., 218 N.J. Super. 260, 527 A.2d 875, 879 (1986).

Applicant has adopted the Examiner's suggestion with respect to using language alternative to the "for . . ." phrases, and has further specified "system portions" to recite embodiments in which some portions may be software and others may be circuitry or hardware.

Reconsideration of the rejections of Claims 21 - 29 respectfully requested.

Rejections under 35 U.S.C. §102(e)

In the Office Action, Claims 1 - 29 were rejected under 35 U.S.C. §102(e) as being anticipated by US Patent 6,327,574 to Kramer, *et al.* (hereinafter "Kramer").

Human Models (e.g. Professional Models) are not the same as Mathematical Models or Character Actors. In initial response to these rejections, Applicant pointed out that Kramer's "models" were not human models, but were mathematical "consumer models":

Kramer:

A "**model**" is a **mathematical function** which attempts to predict the appeal to the consumer of future transactions based on interests and behavior derived from past transactions, and consists of an **attribute**

vector and a set of **mapping functions**:

An "**attribute vector**" is a vector of **data values** such that each element of the vector represents an attribute of the consumer;

A "**mapping function**" is a **mathematical function** that is used to convert between factual information (such as data regarding a transaction or whether an individual is pregnant) and elements of an attribute vector;

(Col. 4, lines 48 - 56, emphasis added by Applicants)

Applicant pointed out that by "human model", the claims are referring to human persons in the profession of promoting products and services via advertisements who are often selected because of their visual appearance with which a particular demographic group would identify. The Examiner stated, in response, that he was unable to find such disclosure.

Applicant respectfully directs the Examiner's attention to the disclosure as follows (emphasis added by Applicant):

Applicant's Disclosure:

[0013] However, each one of these **targeted ads**, even though they are selected for user's characteristics, must be individually produced in order to **appeal to the particular targeted demographic group**. For example, two separate ads must be produced, one for a senior citizen and one for a college student, in the above example. In the first ad, a message and **human model or spokesperson who is also a senior citizen may be featured**. In the second ad, a message and human **model may be featured who is of the age range considered to be representative of a typical college student**. It is well known in the advertising industry that consumers respond to advertisements which feature human models and spokespersons who are similar to themselves, in age, gender, ethnic background, economic strata, etc.

One well-known definition of the term "model" is just such a professional model or spokesperson (emphasis added by Applicant):

Dictionary:

model ed, -elling.

—noun

1. a standard or example for imitation or comparison.
2. a representation, generally in miniature, to show the construction or appearance of something.
3. an image in clay, wax, or the like, to be reproduced in more durable material.
4. a person or thing that serves as a subject for an artist, sculptor, writer, etc.
5. a person whose profession is posing for artists or photographers.
- 6. a person employed to wear clothing or pose with a product for purposes of display and advertising.**
7. a style or design of a particular product: His car is last year's model.
8. a pattern or mode of structure or formation.
9. a typical form or style.
10. a simplified representation of a system or phenomenon, as in the sciences or economics, with any hypotheses required to describe the system or explain the phenomenon, often mathematically.
11. Zoology. an animal that is mimicked in form or color by another.

(Source: *Dictionary.com* Unabridged (v 1.1). Retrieved September 21, 2007, from Dictionary.com website:

<http://dictionary.reference.com/browse/model>)

"Targeted marketing" is a well-known concept in the field of advertising and marketing which refers to select such human models to appeal to or represent a certain demographic group:

Web-based Collaborative Encyclopedia:

Target market

Target market is, in marketing, the market segment to which a particular product is marketed. It's often defined by age, gender, geography, and/or socio-economic grouping. Targeting strategy or targeting is the selection of the customers you wish to service. The decisions involved in targeting strategy include:

- * which segments to target
- * how many products to offer
- * which products to offer in which segments

There are three steps to targeting:

- * market segmentation
- * target choice
- * product positioning

Targeting strategy decisions are influenced by:

- * market maturity
- * diversity of buyers' needs and preferences
- * strength of the competition
- * the volume of sales required for profitability

Targeting can be selective (eg.: focus strategy, market specialization strategy or niche strategy), or extensive (eg.: full coverage, mass marketing, or product specialization).

(Source: Wikipedia.org, retrieved on 9/21/2007 from http://en.wikipedia.org/wiki/Target_market)

Applicant has disclosed online targeted marketing processes which match the *appearance* of the advertisement model (e.g. image file) with the general *appearance* of a demographic group to which the instant user is known to belong (e.g. showing a senior citizen model to a senior citizen user, a student model to a student user, a family to a family user, etc.) to achieve

targeted marketing. See, for instance, disclosure at paragraphs (emphasis added by Applicant):

Applicant's Disclosure:

[0024] These dynamically generated composite advertisements provide the ability to maintain a smaller database of advertisement data objects which can be recombined in realtime in a plurality of combinations to achieve **a presentation which targets a particular consumer group or demographic section of the population.**

...

[0033] Having these two or more repositories (or more) allows a dynamically generated advertisement to be composed of a plurality of components, each selected from the various repositories based upon relevant visitor characteristics. For example, if a user is known to be interested in investments and to be **a senior citizen, an image of a celebrity senior citizen may be selected from the model repository,** and an ad regarding investment opportunities or investment services may be selected from the ad repository. **These two images -- a senior celebrity with a investment services ad -- are then combined to create a highly targeted composite advertisement.**

...

[0045] Turning to Figures 4a and 4b, examples of two data items selected from two repositories for a particular visitor characteristics are shown. Figure 4a shows a **model graphic image of a family,** and a young family at that. This **image file** may be indexed in multiple ways in the model repository (31) as **"family" and "family with young children"**.

[0046] Figure 4 (b) shows a potential advertisement message or background for vacation or travel. This image file may be indexed in multiple ways in the ad repository (32) as "travel" and "vacation".

[0047] Based upon a particular visitor's characteristics, such as the **known fact that the visitor is interested in travel and is a family member** (perhaps the user "clickthrough" from a web site concerning family vacation planning), the **two graphic images** shown in Figures 4 a and Figure 4b **may be combined on a dynamic basis to create the** composite banner ad (301) shown in Figure 5 for display a web browser viewing frame.

Matching Demographic Interests is not Matching Demographic Appearances. The Examiner has also cited the depiction of a human adult morphing into a rodent shown on the front of a book cover in Kramer's disclosure. Applicant points out that the *adult* human model does not represent the demographic *appearance* of Kramer's example user who is a *child*, but instead, the subject matter of the *book* itself is what matches the demographic *interests* of the child. Further, Kramer's "merging of images" is not dynamically creating the image of the book by merging the book cover with an image of an adult and with an image of a rodent, but instead Kramer's "merging" is that of a static (previously created) book cover image display onto a web page.

Amendment in Response to Examiner's Clarifying Remarks. In review of the Examiner's arguments in the Examiner's answer, Applicant believes that the Examiner was holding that Applicant's disclosure does not contain disclosure to support the interpretation of the claims as "appearance of a human model" which matches the "appearance of the instant user", for example. Thus, the Examiner believed it was appropriate to interpret the claims as merging images of *any* model (not necessarily matching a demographic appearance of the instant user) with any secondary image or text, where the secondary image or text is targeted to the demographic *interests* of the user (e.g. merging a children's book image onto an advertisement page about the book for display to a child user as in Kramer).

Applicant respectfully submits that in view of the foregoing provided citations from the disclosure, and the extrinsic definitions, the specification does in fact support interpretation of the claim terms as setting forth matching of model images according to the demographic appearance of the user. Applicant respectfully requests reconsideration on this point, because the claim terms are to be interpreted in light of the specification, whereas the claims are part of the specification and would be read and understood by one of ordinary skill in the art in the context of the disclosure:

35 U.S.C. 112:

...

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

...

Federal Circuit regarding Interpretation of Claim Terms in view of Inventor's Disclosure:

"Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification."

...

"For that reason, claims must be read in view of the specification, of which they are part . . . [T]he specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term . . ."

"Consistent with that general principle, our cases recognize that the specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor's lexicography governs. . . . In other cases, the specification may reveal an intentional disclaimer, or disavowal, of claim scope by the inventor. In that instance as well, the inventor has dictated the correct claim scope, and the inventor's intention, as express in the specification, is regarded as dispositive." *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) (en banc).

While the Office is instructed not to read the specification into the claims, neither can it read the claims out of the context of the specification. To advance the examination of this application, Applicant is voluntarily amending the claims to specifically match the *appearance* of a human model with the user's demographic appearance.

Allowance of Claims 1 - 29 is respectfully requested.

Complete Response to All Grounds of Rejection

It is believed that all grounds of rejection are addressed by the present reply. Should the Examiner believe that one or more grounds are not addressed by the reply, or that one or more grounds were not understood by Applicants, the Examiner is requested to contact Applicants' agent for clarification or filing of a supplemental response.

Respectfully,

A handwritten signature in black ink that reads "Robert Frantz". The signature is written in a cursive, flowing style. It is flanked by two large, stylized forward slashes (/) on either side, which are also handwritten.

Robert H. Frantz, Reg. No. 42,553
Agent for Applicant

Tel: (405) 812-5613

Franklin Gray Patents, LLC